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ABSTRACT

This chapter of "Principles of School Business Management" looks at the law affecting collective bargaining by public employees (with particular emphasis on the schools), reviews the methods used to resolve disputes before and after agreements are signed, and considers the responses that management can make to issues raised during negotiation. The chapter first examines constitutional issues affecting government agencies as employers, the employer's duty to bargain, the role of the public labor relations board, legislative approval of agreements, and the distinction between "meeting and conferring" and true collective bargaining. Appropriate bargaining units at different educational levels and appropriate subjects for bargaining are considered next. The chapter then discusses breakdowns in the negotiation process and possible methods for resolving impasses, including mediation, fact-finding, arbitration, and other solutions. The resolution of disputes over employee grievances or management's rights is covered next. The chapter then turns to the management of collective bargaining from the district's perspective. Among the topics considered are the role of the school business administrator, changes in the negotiating environment, analysis of the long- and short-term costs and benefits of employee compensation packages, factors in salary administration, the costs of fringe benefits, and negotiation impasse resolution. Eighty-two footnotes are provided. (PGD)

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Legal and Managerial Aspects of Collective Negotiations

Thomas N. Jones and Grover H. Baldwin

Collective negotiations is simply one way in which an employer interacts with a large group of employees. Another way is for the employer to contract individually with each employee. Negotiation is a technique applicable to all phases of an employment relationship. Thus, an examination of the legal aspects of collective negotiations in public education must be concerned with many items in addition to contract bargaining. A number of issues that arise when individuals deal with governing bodies must be considered, as well as the difference between collective bargaining and the requirement in some states that the public employer simply "meet and confer" with employees.

When true collective negotiations occur, law has developed regarding the nature of an appropriate bargaining unit. There are restrictions on the topics which are properly subject to collective negotiation when employment contracts are being designed. Since contract negotiation is rarely trouble-free, when breakdowns in the negotiating process occur, the law has evolved several processes for resolving conflicts.

Legal issues in collective negotiations do not end once a contract developed through bargaining goes into effect. Invariably it becomes necessary to resolve disputes which arise during the term of the contract. This process, too, will be considered.

The legal impact of collective negotiations on the traditional "management" rights of school boards is significant. Major issues will be dealt with in the first part of the chapter while management responses are explored in the second.

Finally, the educational field is in flux in the face of changing enrollment patterns, budget cutbacks and calls for reform of America's educational process. The first portion of the chapter will close with a discussion of the present trends in the law of collective negotiations in public education employment.

Constitutional Considerations

When a governing body is the employer, constitutional issues automatically arise. The federal and state constitutions define the rights of an individual interacting with government. These rights continue to exist even when the individual is a teacher (or other school employee), the interaction is through an employment relationship and the government involved is simply a local school board. All laws or regulations involving public employees must harmonize with constitutional protections.

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When school employees protest a local ordinance or regulation of a board of education and the conflict is litigated, the offending requirement is evaluated against the appropriate constitution. Most laws and regulations are upheld because they will meet the minimum standard of being rationally related to promoting a legitimate governmental interest. However, when a public employer tries to interfere with a fundamental right of its employees or draws distinctions among them using illegal discriminatory grounds, the courts are quick to uphold the individual employee against the employer. Such laws or regulations are upheld only if they reasonably promote overriding governmental interests. In recent years, the most successful challenges have been to legislate restraints on joining labor organizations.[1] These restrictions are generally unconstitutional, violating the employee's freedom of association. Statutory restrictions on public employee union membership have been upheld only when they are limited to managerial or supervisory personnel. However, the courts have not been eager to find that the right to join labor organizations imposes a constitutional duty on the government to bargain collectively. The duty to bargain collectively is imposed by statute, rather than by any constitution.[2] In most states where the legislature has imposed this duty, the laws have been found constitutional.

The Duty to Bargain

When state law permits collective bargaining, the employer has the duty to deal with the public employee organization. Both sides must bargain, but neither must agree. All that the law imposes is a duty to bargain "in good faith." This duty is ongoing and has different meanings at various stages of the negotiating process.[3] At the very beginning of contract discussions, it means that neither side can insist that a particular topic must be discussed first. Good faith bargaining requires both the employer and the employee organization to present demonstrably reasonable proposals. When requested, the facts and projections used to develop a proposal must be made known so that informed negotiation can occur. Finally, the requirement of good faith bargaining continues after an agreement is signed; unilateral changes in topics subject to collective negotiation will be struck down by the courts.

Public Labor Relations Boards

With the advent of public employee's labor organizations has come the formation of public labor relations boards by the state legislatures. These administrative bodies serve by resolving contract disputes and breakdowns in negotiation, evaluating the terms of dispute settlement and occasionally imposing penalties on either employers or employee organizations found in violation of fair labor practices. Board authority varies from state to state, being dependent on the specific statutory grants of power. Public employee relations boards, given a broad grant of jurisdiction, hold hearings, make findings and issue orders as their function. Generally, this behavior is not an unconstitutional usurpation of the power of the courts. However, in states where statutes covering broad board authority are narrow and specific, judges will often restrict boards' actions to the letter of the law. The law

recognizes that an administrative agency can exercise only those powers explicitly granted to it by the legislature.[4]

The Legislature Veto Problem

In the private sector, contracts developed through collective bargaining go into effect upon ratification by union members. The employer who has consented to such a contract is bound by its terms. When the employer is a local school board, however, another layer of approval is required before an agreement can be finalized. Any terms of the agreement that require expenditures of government funds may be in jeopardy even when the parties to the contract, the employer and the employee organization, have agreed. If a statute so provides, the contract is still subject to approval by the appropriate fiscal body before it becomes binding.

This risk, though rarely contemplated, is by no means an oddity restricted to a few states. In 1982, when thirty-one states had provided for collective bargaining by at least some public employees, twenty-one had statutes clearly stating that all negotiated financial terms were subject to legislative approval.[5] In the other ten states, the state constitutions stipulated that only the legislature (as opposed to any negotiating team) had the power to allocate state funds.

Typically, a legislative veto of financial terms of a negotiated agreement occurs in one of two ways. Either the contract is negotiated and takes effect after the legislature has passed the current year's appropriations, or the legislature fails to appropriate sufficient funds to cover increases in a multi-year contract. Whenever the financial provisions of a negotiated agreement are vetoed, only the remaining non-economic terms may be enforced.

Collective Bargaining vs. "Meet and Confer"

As of 1984, education employees in at least forty states and the District of Columbia may bargain collectively or meet and confer with the local school board.[6] As already discussed, collective negotiations impose a duty to make proposals and counter-proposals in good faith. There is an unstated expectation that all items agreed on will be written down, signed by both parties and henceforth regulate the employment relationship. Statutes requiring collective negotiations are usually modeled from the National Labor Relations Act (NLRA), which governs employment relations in the private sector.[7]

The situation is much different in the nine states where the only duty is for the employer to meet and confer with the employees.[8] In these states, the laws applicable to labor relations of public employees differ significantly from those affecting the private sector. Most noticeable is the retention of a higher degree of managerial discretion in the public employer.[9] Conversely, public employee organizations have far fewer rights in states mandating "meet and confer." The employer's only duties are to meet at reasonable times and to discuss proposals submitted by the employee's representative.[10] The employer need not act on any of these proposals. There is no written statutory expectation that an agreement will be negotiated. Nothing need be reduced to writing.

An interesting anomaly in the usually strict dichotomy between the duties to collectively bargain and meet and confer is presented in eight states. In seven of these jurisdictions,[11] the local school board must join in collective negotiations on certain issues. These are typically related to wages, hours and other conditions of employment, the so-called mandatory topics of bargaining which will be discussed in greater detail later. The legislatures in these states have imposed an additional duty to meet and confer on other topics. This second group of topics generally involves managerial choices and policy decisions that impact less directly on teachers and other school district employees. Finally, the legislature in Nebraska has reversed this order: the employees' organization first submits a request to meet and confer with the school board; if the employer refuses the request, the state Commission of Industrial Relations can order collective bargaining.

Appropriate Bargaining Units

Elementary/Secondary Education

When a school district has only a few employees, there is no inherent difficulty in bargaining collectively with all district employees who have similar interests at once. In fact, the general pattern across the country is that bargaining units are district-wide in scope.[12] However, when a school district has a larger number of employees, the dynamics of the workplace tend to more closely resemble that of privately employed organized labor. Not surprisingly, a number of states have statutes specifying the acceptable composition of bargaining units of public employees. In addition, when two rival teachers' associations present differing philosophies on the issue, the dominance of one over the other in a school district can influence the composition of the bargaining unit.[13]

While particular state laws may differ, typically units for certified teachers exclude custodial and clerical workers. The basis for this is found in private employment labor law where bargaining units are structured to contain only those employees sharing a "community of interest" in similar job requirements, hours and work environments. The issues become complex when it is necessary to decide what other employees may be included in a unit with classroom teachers. In most jurisdictions, specialty teachers and permanent substitutes are included in the unit. The determination is based on the amount of time spent in the classroom. Using the same standard, per-diem substitutes generally are excluded from the teacher's bargaining unit. Currently, the problematic areas involve whether to include coaches, teacher's aides, school district coordinators, department heads and laboratory personnel.

The most frequent factor for excluding certain personnel is administrative or managerial function. In some states,[14] publicly employed administrators have bargaining rights. In nine of these states they must form separate units, at least in larger districts.[15] It is on the issue of including supervisory personnel that the two major teacher's associations differ sharply.[16] The National Education Association (NEA) is profession-oriented and tends to view all professional employees as equal parts of the education team. The NEA generally disfavors separating classroom teachers from supervisors when bargaining collectively with local school boards. The American Federation of Teachers (AFT) takes the more traditional labor view

found in private employment. Focusing on the teacher as worker, the AFT generally regards supervisors as part of the management that teachers bargain against.

Higher Education

Different issues develop when forming bargaining units in colleges and universities. Collegiality is a valued element in this setting. Ideally, power and authority is vested in a body composed of all of one's peers. University faculty members sit on school-wide governance committees; academic departments are frequently run on a chaired committee basis. The question of whether any or all of these traditional practices transform the faculty members involved into supervisors unable to join the bargaining unit has caused some concern. Courts have recognized that collegiality defies the traditional labor/management dichotomy.[17] The law has resolved, however, that the faculty involved in a collegial structure serve as advisers and make recommendations, rather than bargain with the university.[18] It is necessary to note that both the university and the faculty's exclusive bargaining agent have the option of delegating bargaining authority to the collegial governance committees.[19] Furthermore, the role of the collegial structure is a permissive subject for collective negotiations.

Appropriate Subjects for Bargaining

There are three categories of topics when bargaining in the public sector: mandatory subjects, permissive subjects and unlawful subjects.

Mandatory Subjects

As the name indicates, mandatory subjects are those on which the employer is required to bargain in good faith until impasse is reached, in jurisdictions which require collective bargaining. It has been said that the public sector places a great reliance on statutes to determine the exact scope of bargaining.[20] Generally, statutes mandating subjects to be collectively negotiated are modeled on the Taft-Hartley Act's triad of "wages, hours and other terms and conditions of employment." In twenty states the legislature has closely followed this language.[21]

Not surprisingly, much of the conflict between school boards and their employees revolves around interpretations of what constitutes "other conditions of employment." The legislatures or the courts in twenty states have directly addressed this issue.[22] In these states, the law provides a laundry list of mandatory subjects. Employers may not be required to bargain at all on unlisted topics. While law in each state differs, in at least some jurisdictions mandatory topics in elementary/secondary education include teachers' work loads, daily schedules, assignment of teachers to supervise extracurricular activities, grading responsibility, the inclusion of a "just cause" provision for teacher reprimands, contractual benefits other than salary, grievance procedures related to contractual benefits other than salary, grievance procedures to be followed in contract disputes, class size, prep periods, school calendars and lay-off decisions impacting staff or eliminating departments on remaining teacher's terms and conditions of employment. At the same time, other jurisdictions have decided that school boards do not have to bargain on class size, budget decisions, school calendars, daily schedules, the reorganization of

departments, selection of extra-curricular activities, number of steps in the salary schedule, textbooks, the use of paraprofessionals or general education policy.

In higher education, mandatory subjects have been held to include class schedules, the right of faculty to select department chairs, conversion of non-supervisors to supervisors, faculty participation in tenure and promotion decisions, the duties of faculty members serving on governance committees and whether tenure is university-wide or restricted to department or school. But the courts have found that appointment of deans, decisions to restructure the college, composition of governance committees, the academic calendar, decisions to change physical facilities and quotas on tenured faculty are beyond the scope of mandatory collective negotiations.

Permissive Subjects

Permissive subjects form the second group of topics which are bargained collectively. Discussion of any permissive topic lies within the discretion of the employer. Permissive topics resemble the interactions between employer and employee in "meet and confer" states. However, a stable labor relations policy encourages the public employer to discuss a broad range of permissive subjects. Some states have statutory or case law articulating permissive subjects.[23] But in general, the lines between mandatory and permissive subjects are not clearly drawn.[24]

Unlawful Subjects

In some states certain topics have been declared to lie beyond the scope of collective bargaining. When a subject is covered by law or constitution, it cannot be negotiated. Thus, in some states, agriculture[25] and certain moral virtues[26] must be taught; in other instances, textbook selection and curriculum must lie with the board of education; and in still others the employee's organization can have no say regarding retirement benefits, termination of probationary teachers or any issue of managerial or educational policy.

Breakdowns in the Negotiating Process

Impasse

When the school board and the employee's organization becomes deadlocked following good-faith collective negotiations of mandatory subjects, they are said to have reached an impasse.[27] The mere refusal of one or both sides to meet with the other, or discuss any mandatory topic, is technically not an impasse. Rather, the refusal constitutes an unfair labor practice which can have dire consequences for the recalcitrant party. According to federal law, " 'impasse' means that point in the negotiation of a labor agreement at which the parties are unable to reach full agreement, notwithstanding their having made earnest efforts to reach agreement by direct negotiation. . . ."[28]

Only in Michigan does an impasse entitle a public employer to act unilaterally. In all other jurisdictions, the two sides must continue jointly to seek a solution. Once impasse has been reached, the negotiators have available a variety of tech-

niques to resolve the problem. Frequently a specific series of procedures already have been detailed in a contract between the employer and the employees. When these procedures fail, or when no prior arrangements have been made, the laws of thirty-four states provide the steps that must be followed in that jurisdiction.[29] Many of these states also provide a statutory definition of "impasse."

Mediation

The most common first step in impasse resolution is the use of mediation.[30] Mediation is distinguished by its informality. An individual or panel having the confidence of both parties will seek to reduce differences, and perhaps propose compromise solutions. When the parties are unable to agree on a mediator, the public employee relations board of many states can provide one. Alternatively, the parties can agree to use the offices of any of several national organizations. These include the U.S. Federal Mediation and Conciliation Service and the American Arbitration Association. Occasionally state law will specify the use of such a group when the parties are unable to agree on a mediator.[31] However, because mediation is an informal process, any person respected by both sides can be selected.

Mediation is a voluntary process. It requires two sides that want to reach a settlement but find themselves unable to do so without the help of a third party. The process works best if the mediator is called in before the positions of the parties become rigid.[32] However, because mediation is informal and there are no sanctions available against a non-cooperative party, it cannot resolve all impasse situations.

Fact-Finding

Fact-finding is specified as the second step for impasse resolution in the laws of twenty-four states.[33] (In Maryland, Nebraska, Oklahoma and Wisconsin no mediation occurs prior to fact-finding.) Fact-finding is significantly different from mediation. A formal procedure, it involves the designation of an individual or a panel empowered to conduct investigations. Fact-finders conduct public hearings to which the requirements of due process attach: adequate notice to all interested parties and the opportunity to be heard. After deliberation and consideration of all evidence collected, the fact-finder issues a written report. This summarizes the evidence and contains recommendations for settling the impasse. Typically the report is first issued privately to the parties. In the law of several states it is made public, unless the parties resolve their differences within a statutorily mandated period.[34] While the recommended solutions are not binding,[35] the threat of publication of an unfavorable report is sometimes enough to prompt stubborn school boards and employee's organizations to change their bargaining positions.

Fact-finding differs in the public and private sectors. In private industry, a fact-finding report is usually sought only after a strike has been called. But when the employer is the government and employees are prohibited by law from striking, a fact-finder's report acts as a strike substitute.[36] It is not a procedure that always resolves the impasse. The success of fact-finding seems to depend on several factors: 1) whether the procedure is truly voluntary, or is mandated by statute; 2) the experience and negotiating abilities of the fact-finder and the representatives of the parties; and 3) the source of funds which cover the costly procedures. When the parties bear the cost, the results are better then when the state government pays.[37]

Arbitration

Mediation and fact-finding both depend on the potential of a neutral third party to restore a rational tone to negotiations. Generally, no sanctions compel the parties to cooperate except, of course, the pressure of public opinion. This is not always enough. In some cases it is necessary to resort to a procedure that forces an end to the impasse. Most often states which specify a step beyond fact-finding in their statutes choose arbitration.[38] Arbitrators unilaterally determine compromises to resolve an impasse. Arbitration can be used either immediately after mediation fails, or as the sole procedure mandated by the legislature, as in South Dakota.

In the private sector, arbitration is ordinarily distinguishable from mediation and fact-finding by its binding nature. Traditionally, the decision of the arbitrator is enforceable by the courts. However, the reality of the public employment sphere has altered this. In certain states arbitration is statutorily identified as non-binding.[39] In all states, except Connecticut, the decision of the arbitrator is binding only to the extent that the governing body appropriates funds to implement it. Since the threat of legislative veto injects an element of doubt into the finality of public employment contracts, some states have found it advisable to indicate that the board of education may agree to be bound by an arbitrator's decision.[40]

Other Solutions

Not all jurisdictions have opted to permit voluntary or statutorily mandated binding arbitration to end impasses in collective bargaining. Certain states have chosen more creative solutions.

In Florida, Hawaii, New Hampshire and New York the final decision is left with the "appropriate legislative body," generally the one with financial control of the contract. Decisions are to be made with the public's best interest in mind.

Indiana requires the terms of the previous contract to continue in force until impasse is broken. The employer can draw tentative individual contracts in the interim.

Kansas and Vermont utilize a process sometimes called "finality of decisions." Final resolution of disputes left after all other steps are ended is given to the school board, one of the recalcitrant parties. At first glance, this seems remarkably unfair to the employees. Effectively, the school board could refuse to resolve any disputed contract terms, knowing that ultimately it will dictate them. The protection against this is two-fold: first, such an attitude violates the duty to bargain in good faith and is an unfair labor practice. Second, the school board is an elected body and must remain aware of public sentiments. The declared advantages of finality of decisions relate to the fact that school boards are elected "governments."[41] Binding arbitration removes decision making from the people elected to determine educational policy. Finality permits these officials to control all issues that come up while running the schools.

In Nebraska, a "meet and confer" jurisdiction, failure of the parties to agree on an employment contract triggers an interesting result. Fact-finding is mandated, but the report is not binding. If a dispute remains, the Nebraska Commission of Industrial Relations can order the parties to engage in collective bargaining. As an alternative, the Commission is empowered to exercise control over a public employer and unilaterally set the employees' wages, hours and terms of employment.

Ohio permits the parties to mutually agree on binding arbitration or settlement by a "citizen's council." If the employer and employee organization refuse to agree, Ohio permits public employees to strike.

Finally, Wisconsin uses a modest variation of binding arbitration. As was mentioned earlier, arbitration ordinarily involves compromise between the final offers of both sides. But in Wisconsin the arbitrator must adopt one side's final position without modifications. This forces both sides to remain as reasonable as possible in making the last offer. There is no way for either the employer or employee organization to know which position the arbitrator will choose.

Resolving Disputes Arising Under Agreements

Grievance Procedures

Conflicts between a school board and its employees do not end once a contract has been signed. An individual or a group will complain that the employer has violated rights created by the contract. Such complaints are called "grievances." A leading commentator has observed that a major impetus toward public employee unionization was the absence of meaningful procedures for resolving grievances.[42] Typically, employee organizations strive to negotiate contracts that not only define grievances but also spell out procedures for both to follow when conflicts occur. This benefits not only teachers and other employees, but also the school board. A well-written grievance section in a contract avoids the possibility that the employees will seek to win concessions through grievances which could not be gained during collective bargaining. However, as of 1984 just thirty-five state legislatures had seen fit to address grievances by education employees in their statutes.

Procedures for resolving grievances can be provided by contract or by law. The statutes addressing the matter generally fall into two categories. In the first, the employer and employee organization are permitted to negotiate a grievance procedure which may include a provision for binding arbitration.[43] The state may offer arbitration services. A statutory grievance procedure is often available in case the contract is silent on the issue, or when the negotiated procedure is not invoked. This is the approach taken in twenty-five states.[44] Used by eight states, the second requires the parties to negotiate a grievance procedure and include it in their contract.[45] Occasionally these states will set out a procedure to be followed if the contracted system fails. In South Dakota and Virginia it is the employer's responsibility to establish grievance procedures.

When an employee feels that rights granted by the employment contract have been violated, a number of procedural questions immediately develop. The first is the timeliness of the initial complaint. The majority of employment contracts in the private sector provide a specific period of time within which a complaint must be formally entered.[46] This is becoming the case for many public employment contracts, either through statutory language or by negotiation. When no time period is specified, the legal doctrine of *laches* applies. Simply stated, this requires formal complaints to be made within a reasonable time after the employee learns that a right may have been infringed. Complaints by individuals who have "slept on their rights" lose the opportunity for redress. The question of what constitutes a reasonable time is within the discretion of the arbitrator. It is not unilaterally set by either

the employer or the employee. These considerations also apply to the second procedural question, the timeliness of compliance with each additional step of the grievance procedure.

Unfortunately, from time to time, one of the parties misrepresents a key element on which, to their detriment, the other party relies. When this occurs, the procedural issue called "estoppel" is triggered. The party which made the misrepresentation cannot proceed further on the false set of facts. When the employee is the party guilty of misrepresentation, this means that the grievance will not be processed. Estoppel does not change the contract or any rights created in the employment relationship. It does preclude the continued assertion of those rights.[47]

A fourth procedural issue in grievance resolution is *res judicata*. *Res judicata* literally means that the subject has been settled in a prior judgment. Since the conflict has already been decided on its merits, it cannot be relitigated by the same parties.

When a grievance is being settled, the rules of evidence are far more relaxed than they are in a court of law. The primary concern is that both sides be treated fairly. In fact, there are no formal rules of evidence. An arbitrator is bound only by the constitutional restraints of due process.

A final procedural question is whether the employee organization should be able to decide which grievances are to be pursued through the full series of resolution steps. The alternative is to give individual employees the right to bring their complaints directly. If this second alternative is chosen, the question of who pays the cost must be decided.

Dispute Resolution Techniques

Most commonly, the first step in grievance procedures in the public sector is a verbal complaint to the employees' immediate supervisor.[48] Usually no written record is made unless the conflict cannot be resolved at this level. The second step involves a written complaint. Depending on the procedure set out in law or in the employment contract, this will be to an intermediate authority or a panel set up to handle grievances. The final step in twenty-seven of the thirty-five states which mention education employee grievances is binding arbitration.[49]

It is important to note that grievance arbitration, sometimes called "interests arbitration," is not an impasse procedure. Grievance arbitration is a procedure agreed to during collective negotiations of the contract. It occurs only when an employment contract is in force. Arbitration is provided by a neutral individual or panel. When binding arbitration is used, the arbitrator's decision is final and will be enforced by the courts, if necessary. The decision will not be overturned by the courts, unless it was made by an arbitrator acting outside his authority, there is strong evidence of an arbitrator's bad faith or bias, or the proceedings were inherently unfair to one of the parties.

An interesting question is the extent to which grievance procedures in an employment contract either supersede or are themselves negated by procedures contained in a statute. This is very much an open issue in many jurisdictions. In Florida, the courts have declared that an aggrieved school board employee has the right to elect between contractual and statutory remedies.[50] But in New Jersey, the law is that grievance procedures set by contract do not operate in situations already covered by statute, even when the procedures do not actually conflict.[51] This is similar to a holding in Nebraska that procedural due process requirements are not

affected by contractual grievance arbitration procedures, even when the employee initiates arbitration.[52] However, at least one New York court has held that statutorily established procedural due process is "waived" by a collectively negotiated grievance arbitration clause.[53]

Collective Bargaining and Management Rights

In all jurisdictions requiring school boards to negotiate collectively with employees, there has been an end to unilateral dictation of contract terms by management. Employee organizations naturally want to control, as much as possible, all conditions affecting their members. Local school boards, however, are elected bodies retaining full responsibility to the community. It is not appropriate, and often illegal, for them to relinquish control over educational policy.

The duty to negotiate in good faith does not equal a surrender of the statutory mandate to supervise the operation of a district's schools and the subjects taught. However, a recent study shows that mandatory collective bargaining laws do affect the perceived abilities of school board members to fulfill the duties of office.[54] Not surprisingly, laws requiring binding arbitration to end impasse are seen as intruding the most into traditional management rights. According to U.S. Supreme Court, the "managerial decisions which lie at the core of entrepreneurial control" should not be restricted by collective bargaining.[55]

Elected officials are public trustees and their status as an employer does not alter this fact. The collectively negotiated agreement should spell out management's rights just as it does those of the employees. The following "model" language has been proposed:

> The Board of Education, on its own behalf, hereby retains and reserves unto itself without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by applicable law, rules and regulations to establish the framework of school policies and projects including, but without limitation because of enumeration, the right:
>
> 1. To the executive management and administrative control of the school system and its properties, programs and facilities and the activities of its employees.
> 2. To employ and re-employ all personnel and, subject to the provisions of law or State Department of Public Instruction regulations, determine their qualifications and conditions of employment, of their dismissal or demotion, their promotion and their work assignment.
> 3. To establish and supervise the program of instruction and to make the necessary assignments for all programs of an extra-curricular nature that, in the opinion of the Board, benefit students.
> 4. To determine means and methods of instruction, selection of textbooks and other teaching materials, the use of teaching aids, class schedules, hours of instruction, length of school year and terms and conditions of employment.[56]

School boards may also find it advisable to include a clause banning strikes in negotiated contracts. The employment contract spells out the rights and responsibilities of both sides, and should contain no implied terms. This is the case even

when state law prohibits strikes by education employees. Few laws have been effective in deterring teacher strikes, even when fines are imposed.[57]

Trends

As school boards seek to hold on to traditional management prerogatives, their employees are pressuring to broaden the scope of collective negotiations. There has been a gradual erosion of the subject matter lying within administrative discretion. In 1983, the American Bar Association prepared a list of some of the issues most likely to affect labor relations in education in the next few years.

Agency Shop Question. Agency shop, or "fair share," fees are collected from all employees regardless of union membership. An agency shop fee is money equal to union dues and fees. In a "fair share" system, non-union members are assessed a *pro rata* share of collective bargaining costs. The fees must be paid, as a condition of employment. The issue can be summed up as having a "free ride," versus having to purchase the right to work.

In 1977, the Supreme Court declared that these fees were not unconditional." The only requirement is that a rebate be available to non-union employees who object to politically or ideologically motivated expenditures. A state of flux continues to exist over religious exemptions, and interpretations of "political or ideological purposes." In California, for example, the fees can be used in lobbying related to legislation affecting employer-employee relationships, as well as toward campaigns for or against ballot propositions affecting employee interests. Charitable and philanthropic uses are also allowed.[59] But a New Jersey court has found that some of these uses could be opposed to employee's individual ideologies, even when their status as employees might be improved.[60]

It should be noted that although such fees are not unconstitutional, they may not be valid under a particular state's laws. Where they are, a secondary issue is the appropriate sanction when an employee refuses to pay. Firing may violate state tenure laws.

The Duty of Fair Representation. Employee organizations must fairly represent their members against the employer. When a refusal to process a grievance is made in good faith, without arbitrariness or inexcusable neglect, the union has not breached its duty to the employee. Suppose, however, that an employee has initially suffered damages because of the employer. If the union fails to properly pursue the grievance to the final stage in a timely manner and the delay causes the employee to suffer more damages, the employer can recover this increment from the union. How employee organizations will react to this holding remains to be seen.

Impasse Arbitration. Even as more jurisdictions alter their statutes to allow for arbitration as the last step of impasse resolution, public employers in general are coming to regard strikes as the lesser of two evils.[61] Arbitration takes the final decision away from officials elected to decide such matters.

In addition, as was discussed at the beginning of this chapter, arbitration awards are not secure. They can be destroyed by failing to appropriate the funds necessary to carry them out. In the light of the recent economic slowdown, these considerations may well cause a swing away from impasse arbitration.

Merit Pay. The past decade has seen a reemphasis on "back-to-basics" education and a call for merit pay to exceptional teachers. While curriculum content is

still very much a matter of policy set by local boards of education, merit pay clearly falls into the category of mandatory topics for negotiation. Teacher organizations tend to be very reluctant to support this concept. Perhaps this is because merit pay would tend to create competition and friction among union members, while unions strive to minimize such conflict.[62] A teachers' organization would be in a difficult situation indeed if requested to process a grievance that a member was wrongly passed over for merit pay. The complaint implies that the grievant was more deserving than the union member who received the increase. The easiest way for a union to avoid this situation is to avoid supporting merit pay. However, a trend may develop that school board employees will promote merit pay, if the employer concedes to a union demand in another area during collective bargaining.

"Sunshine" Laws. A number of states have passed legislation requiring all government decision making to be made in open, public meetings. States vary widely as to whether or not this requirement extends to negotiating sessions. In some jurisdictions, open negotiating sessions may be optional. When that is the case, neither side can unilaterally decide to hold negotiations in public.[63] State laws should gradually change to clarify this point. However, as of 1980 only twenty-four states had addressed the issue.[64]

Management Aspects of Collective Negotiations

Having examined the legal issues of collective negotiations, the management aspects of this process must be examined with specific concerns that are important to school business administrators.

Roles of School Business Administrators

While the school business administrator has traditionally played the role of providing information within the negotiations process, this role is expanding to include serving as a change agent charged with merging those complex aspects of school business management with academic administration. This change is increasing the demands on the school business administrator to include the ability to foresee and communicate financial trends as well as the day-to-day operations of the district. These data also include costs and revenues while matching these to the district's objectives thereby insuring cost effectiveness and efficiency within the district's overall operation.

This individual is recognized as a member of the strategic management team of the school district. The use of strategic management principles is paramount to the success of the business administrator in the collective negotiations process. The four aspects that make-up strategic management provide a pro-active stance on the part of the school district's management, and this stance is needed if school districts are to survive in the uncertain economic and changing atmosphere of education.[65] This strategic management process calls for all management personnel to move from the typical reactive stance of the not-for-profit, governmental agency where events control the organization, to a more creative, entrepreneurial stance that demands forecasting the future, being aware of trends in the total environment and planning for the long-term success of the district, both in academic and financial terms. This includes the foresight of planning to account for the overall effect that the district policies have on personnel through the collective negotiations process.

Initially, the school business administrator is concerned with: gathering information regarding the status and needs of the employees; trends in compensation; ranges and types of fringe benefits being offered by comparable school districts; analysis of the district's financial environment; and the overall goals of compensation as established by the school district management team. The concern of the district is to match the needs of the employees with the needs of the district to maintain and motivate the employees via a sound compensation program.

Second, the school business administrator deals with the organizational concerns, the positions of the various groups both inside and outside of the organization, all of whom influence management decisions. The school business administrator is concerned with the general tenor of the taxpayers and their willingness to support additional tax burdens. A final analysis of the ability of the district to pay is vital to the negotiations process. Further, the school business administrator is concerned with possible changes in the legislature and federal funding opportunities that yield revenue for the district.

Next the school business administrator is concerned with the financial aspects of the district. The resource requirements, funding possibilities, long-term sources of revenue and short-term debt funding are a concern. The accounting background and financial analysis skills of the business office become linked with the emphasis on the generation of various alternative programs for compensation, and the funding of those alternative programs.

Last, the school business administrator is concerned with the control mechanism and the establishment of the means to oversee the entire financial operation of the district, in order to maintain optimum utility of the program for all aspects of the financial and personnel areas. This measure of control is needed as the long-range program planned by the school business administrator will permit incremental adjustments to accommodate the changes in circumstances of employees and the entire work force and the objectives of the district.

Interwoven in this process are the strategies for negotiations. In the role of designer and developer of the financial information pertinent to strategies for negotiations, the school business administrator is concerned with each item in the negotiations package, particularly the financial issues. Once these items are recognized as part of the negotiations process, the administrator plans the bargaining objectives that might realistically be expected as the final outcome, as well as the range of possibilities. By measuring the impact of the various negotiating positions, the school business administrator permits analysis of the overall package to effect a solution to the various positions and to evaluate success of the negotiations process.

A Change of Focus

Negotiations will not be the same in the next fifteen years as they have been in the past fifteen years. This is due in part to the maturity of the participants in the negotiations process and the tenure of the statutes that provide a structure for negotiations between teachers' groups and school boards. Although early experiences provided traumatic conditions and adversarial relationships for both sides of the negotiations table, after fifteen years participants have had the opportunity to become familiar with the laws and processes and grow in maturity, reasonableness and responsibility.

The future negotiating environment is further influenced by economic conditions. Where the initial thrust of negotiations between teachers and school boards was for winning the issues of wages, hours and fringe benefits in an atmosphere of plenty, concerns for the future will center on job security, while continuing to push for salary parity with the private sector. It now appears that recession and, perhaps, economic recovery will be the norm for the negotiations environment, amidst the continuing decline in enrollment, loss of revenue and cries for quality and cost effectiveness in education. Other future issues are likely to include teacher evaluations, alternative pay plans, attempts to meet the external demands for quality within education and affirmative action plans as they relate to layoffs.

From the recent settlements between the United Automobile Workers and Chrysler and General Motors, the use of concession bargaining may well be used as a tactic to assuage the general population and maintain the status of the district, both financially and academically. However, regaining the items granted via hard negotiating strategies by the associations is not an easy task, especially when associations view their role as protector of the work force. This will necessitate both parties to adopt a new stance of collegiality to work for effective and efficient solutions of overall problems facing school districts.

In the area of public sector negotiations, one issue needing to be addressed is whether there really is, as suggested a commonality between the private and public sectors in the area of negotiations. While many states have adopted the system and strategies used in negotiations in the private sector in the area of education, there remains the question of whether the two sectors are really that similar. Support for this commonality includes the fact that little evidence has been found to suggest any real difference between public and private sector negotiations when it comes to the issues of allocation of resources and policy control.[66] This lack of difference is due to the nature of collective negotiations and the fact that both sectors are subject to the same external pressures for product quality and demands for change from the general public. Another similarity concerns the internally imposed constraints that come from the organizational structure and the members of the organization. In particular, is the effect of the budgetary cycle on the negotiating process giving rise to the "wait and see what the budget picture looks like before completing negotiations" attitude or the "hold the line once the picture becomes clear" attitude. In both sectors, the economic conditions are set to a great extent by external forces, and the role of the business administrator to plan for these conditions is increasingly more important.

A second study reinforcing the commonality concerned an investigation of the budget-making procedure and the effects of fiscal adversity on the collective negotiations process.[67] These findings indicated that in tight economic conditions, ability to pay was the paramount issue. Ability to pay includes the entire budget and not just salary and personnel costs. Applying these findings to school districts, it is recognized that in tight economic conditions: 1) management postures that there is no money for increases; 2) collective negotiations finish before, or about the same time, as the budget-making process; 3) tight economic conditions dampen the collective bargaining process and create a "negative" tone; 4) money settlements are more modest; and 5) most settlements require additional funding.[68] These findings point to the need for a different posture with regard to collective negotiations—one where all parties work together in a collegial atmosphere to overcome the adversities of the environment and resolve the issues facing them.

This is where the school business administrator's role as a change agent becomes important in providing for quality education, cost effectiveness and efficiency within the academic structure. With these environmental changes, the role of the school business administrator will resemble that of an accounting professional in the private sector who analyzes and evaluates both labor and management's proposals, gathers and prepares information for the various impasse procedures and establishes monitoring procedures for contract administration.[69]

The remainder of this section will deal with four aspects of collective negotiations that are of primary concern for the school business administrator—compensation management, salary administration, fringe benefits and the use of impasse procedures for resolving conflicts within the negotiations process.

Compensation Management

As indicated, one of the responsibilities of the school business administrator is to design, develop and implement the financial strategies which will enable the school district to remain solvent. Nowhere is this role more important than in the collective negotiations process which concerns itself with an estimated 70 percent of the budgetary costs of the district. Although many labor agreements are for a one-year period, the school business administrator is concerned with the trends and long-range effects of collective negotiations and attendant costs to the district for the next five to ten years. Further, the concern is for the entire compensation package for the employees and its relationship to the overall revenues of the district.

Compensation management is concerned with the entire range of compensation granted by the school board to the employee. Compensation includes the employee's salary with the traditional fringe benefits package, and other benefits, both of a cost and a "non-cost" nature. The school business administrator must select a mix of benefits that fit the needs of the individual employee, and at the same time meet the educational, financial and personnel objectives of the district. Recently, many firms within the private sector have moved to flexible, cafeteria compensation plans which permit individual employees to select their benefits or their total compensation package, based on individual needs. Such programs need to be examined for potential use within school districts.

Since the needs of employees and districts are unique, only guidelines can be offered concerning the planning and development of compensation packages. The following guidelines derived from the private sector which have been adapted for school purposes:

1. Clearly define the benefits currently offered by the organization. This includes a detailed listing of all benefits, both cost and "non-cost" benefits, and the reduction of complex benefits (such as hospitalization) to simple and single labels.

2. Define the current level of costs for each of the benefits. This aspect needs to be detailed and as clear as possible. One method might be to reduce

all costs of each benefit to a per pupil per day figure. This not only simplifies the process, but reduces the expenditures to an understandable level for the general public. This figure is computed by dividing the total dollar cost of the benefit by the number of employees receiving the benefit, then dividing that figure by the total number of pupils and dividing the resulting figure by the total number of days the district is in operation, including teacher days.

3. Return to the planning principles of strategic management to determine the realistic options for near-term and long-term improvement, or demand, for each of the benefits. For example, based on an aging workforce, with children beyond the "normal" orthodontic stage, a benefit for dental care including orthodontics, would reduce in value as a benefit, and hence be a cost to the district, while additional funding of retirement annuities might be a realistic rising cost.

4. Determine the cost of each of the near-term and long-term benefits. This calls for gathering information from providers and potential providers about various benefits, and analyzing results of surveys regarding benefits being planned by competitive, comparable school districts with the region. The school business administrator is concerned with the need to provide those benefits necessary to maintain the workforce within the district.

5. Determine the use of each of the benefits with the employee workforce. Gathering information about employees' needs, goals and desires, facilitates near-term and long-term planning for changes in compensation packages and links those changes to the overall negotiating strategies of the district."

The process outlined is completed on an annual basis with planning for the long-term program and its effects. Such an annual reexamination of the compensation program permits a realistic meeting of the employee needs, as well as the incremental shifts needed to maintain an effective compensation plan while meeting the long-term goals and objectives of the management of the district.

The integration of compensation management with the objectives of collective negotiations and the principles of strategic management is an important facet of the changing role of the school business administrator. Tied to the analyses and planning process is the growing awareness of the need to merge compensation and benefits so that needs of both the employee and the employer are met. Additionally, there is the need to merge the reward system of the district with the management process in order for the district to fulfill its educational objectives.

There is a growing shift to provide after-tax and after-inflation compensation that allows for improvement in the employee's standard of living, while maintaining the costs to the district at a reasonable level. Further, as the nature of the workforce changes, and thus the needs of the employees change, management needs to integrate these two facets of compensation—salary and benefits—to meet the needs and provide for the caliber of employees needed within the district. This calls for a constant reexamination of the overall compensation plan, as well as the reward structure and alternatives compensation plans to meeting those needs.

Issues which appear to be a part of the future of compensation management for education include: compensation linked to national inflation via various cost-of-

living adjustments (COLA); influences of state and federal legislation making it difficult to pay differentially due to charges of discrimination; and greater use of computerization in the personnel function, with emphasis on techniques for analysis of cost effectiveness and utility of the total compensation package.[1] The school business administrator must be concerned with productivity, academic excellence and cost effectiveness as well as the needs of employees. In the collective negotiations process, the school business administrator must develop and implement strategies which take into account these different emphases.

Salary Administration

Directly linked to the overall compensation program of the school district is the issue of salary administration. Although this area has traditionally been the domain of the personnel administrator, the school business administrator has an integral role in salary administration beyond the mere issuance of paychecks. As the consultant to the management team, the school business administrator is aware of the issues, problems and current practices within this area to provide maximum use of the revenues of the district to meet the district's and the employee's needs.

The area of salary administration has changed drastically and will change even more with the advent of merit pay plans and other alternatives to the traditional step salary structures. Part of this change is due to the demand for improved quality in education and the demand for assurance of quality of the teaching staff. Tied to this demand for quality is the lack of personnel in certain key areas and an overflow in other areas, all of which provide school district management with the opportunity to develop new salary structures to reward excellence.

There are additional issues affecting the planning and foresight needed by the school business administrator to prepare adequately for collective negotiations. Internal issues include the matter of equity—the fairness between job performance and job appraisal—which impact directly on the alternative and merit pay plans that districts, due to increasing public pressure, are considering. With these new plans come problems which must be anticipated and planned for by school administrators. These include: the subjectivity of the appraiser; the possibility of favoritism; the value structure which sees younger staff doing the job better; and the secrecy of the performance appraisal process that permits poor communication and the sense of inequity that can lead to high turnover among personnel and other morale problems.

External issues involved in salary administration include competitiveness with the surrounding market, both in public schools and in the private sector. This is especially true regarding persons trained in math, science and computer science who can command higher salaries and better benefits outside of education. Non-professional staff is also involved in this issue, particularly when the private sector in the local and regional area compensate workers at a higher rate and offer more prestige than the public schools have traditionally offered.

Other issues involved with collective negotiations and salary administration are the "just cause" clauses within the dismissal portion of the negotiated agreement.[2] What does the management do with employees who are protected by the just cause clause from dismissal but are not performing at a level that warrants the automatic step salary schedule increase? Although not solely a problem for the school business administrator, it affects the administration and equity of the salary program.

Finally, there is the issue of "comparable worth" which has recently emerged as

a major social issue. While school districts have traditionally paid staff (at least for the professional teaching portion of the contract) on a single step salary schedule, the areas of extra-curricular activities are now under close scrutiny with respect to comparable pay. This affects all aspects of the salary administration program, as well as the overall objectives of the district. Aware of these conditions, the school business administrator provides information about the worth of each job based on a market analysis of local and regional competition.

Effective salary administration calls for limiting the use of quantitative decision-making tools and considering external forces affecting the school district and its employees. Proper and cost effective determination and administration of a salary program should be based on a series of checkpoints against which the district, and the school business administrator, can evaluate the program.

Market-indexed Compensation Program. Blending two schemes for a market-indexed compensation program which includes the use of quantitative decision-making tools and procedures, the following steps might be used to determine the district's salary program.[73]

1. Management personnel both at the building and district level prepare complete and detailed descriptions of each position within the district. These descriptions include clearly delineated tasks, responsibilities, preparation needs and expectations of the position within the overall accomplishment of the district's educational goals and objectives.

2. Management personnel then rank each of the positions in a hierarchical fashion based on the importance of the position in accomplishing the goals of the district. This may well mean that certain teaching positions are ranked higher than other positions due to the overall influence of this position on the total education of the student and the accomplishment of the district's objectives. These ranking are reviewed by all management personnel and ranked on a continuous basis until consensus is reached as to the relative rank of each position within the district.

3. Following the ranking of each position, weights, or factor values, are given to each position. This gives to each position a weight that is relative to each other position within the district and is used in combination with the position rank to provide for total position value for compensation purposes. One formula that is used for determining market, or competitive, value is:

$$FV = PV\,(I + 1)^n$$

where:

FV = final value or position value
PV = salary of the entry level
I = net salary increase per year
n = number of years to expected to reach the positions full responsibility and effectiveness within the district.[74]

4. The position value is then converted to either salary grades (not unlike a step salary schedule) or to salary ranges for each position. In either event, the position value is keyed to the market index for salary for similarly prepared and experienced personnel, both within the public education sphere and the private sector.

5. To convert the system to a salary range, which appears to be most typical in using this configuration, the final position value becomes the mid-point of the range from an entry level salary for the position, through semi-interquartile ranges (25th and 75th) and the premium level to be paid an individual for that position. The determination of the range of salaries for each position is based on educational preparation and experience (either needed or available) on the part of individuals to successfully fulfill the position's requirements.

The essence of this salary determination system is linked to the goals and objectives of the district and provides an appropriate compensation for individuals based on the value of the position in the district and their performance. The use of this program also permits more effective hiring practices by allowing management to offer candidates a range of salary based on their potential worth to the district, rather than a salary based on the traditional step salary structure. Further, this program permits annual review of the value and place of each position in the organization and keeps each position competitive with other districts and sectors in the economy.

The salary determination procedure described above is a radical departure from the traditional step salary schedule. Yet, given the economic environment, the demands for quality in education and accountability of educational personnel to meet these standards, and the need to attract and maintain better qualified and difficult to retain personnel in such areas as math, science and special education, such a procedure may well be considered by the management of school districts.

The Step Salary Schedule. More familiar to school management than the previously described salary program is the step salary schedule. It is based on years of experience and level of preparation. This form of salary determination does not need a detailed review. The step salary schedule system is greatly enhanced by microcomputers which can be used not only to determine the salary schedule, but also the total costs of the salary/fringe benefits package for the district. The use of various spreadsheet programs can simplify and speed the operation of both design and development of the salary schedule, and the determination of the total cost of the salary/fringe benefits package.

What follows is an example of such a spreadsheet program. Table 12:1 presents a standard salary schedule based on salary determination for the reward of various years of experience and levels of preparation. Note that between step 2 and step 3, and between levels 3 and 4, there is a monetary increase of $500. This is tied to the granting of tenure within the sample and would be altered to meet individual district and state requirements for granting and rewarding tenure.

TABLE 12:1 Salary Based on the 1984 Median Salary for the State of Kansas

STEP	B.A.	B.A. + 15	B.A. + 30	M.A.	M.A. + 15	M.A. + 30	Ed.S.
1	14910	15210	15510	16010	16310	16610	17110
2	15210	15510	15810	16310	16610	16910	17410
3	15710	16010	16310	16810	17110	17410	17910
4	16010	16310	16610	17110	17410	17710	18210
5	16310	16610	16910	17410	17710	18010	18510
6	16610	16910	17210	17710	18010	18310	18810
7	16910	17210	17510	18010	18310	18610	19110
8	17210	17510	17810	18310	18610	18910	19410
9	17510	17810	18110	18610	18910	19210	19710
10	17810	18110	18410	18910	19210	19510	20010
11	18110	18410	18710	19210	19510	19810	20310
12	18410	18710	19010	19510	19810	20110	20610
13	18710	19010	19310	19810	20110	20410	20910
14	19010	19310	19610	20110	20410	20710	21210
15	19310	19610	19910	20410	20710	21010	21510
16	19610	19910	20210	20710	21010	21310	21810
17	19910	20210	20510	21010	21310	21610	22110
18	20210	20510	20810	21310	21610	21910	22410
19	20510	20810	21110	21610	21910	22210	22710
20	20810	21110	21410	21910	22210	22510	23010
TOTAL	317480	364800	370800	380800	386800	392800	402800
GRAND TOTAL							2616280

The second portion of the program permits the school business administrator to enter the number of personnel at each level of preparation and years of experience. As shown in Table 12:2, this becomes the distribution chart of the personnel within the district and is changed each year.

Table 12:2 Personnel Distribution for a Typical School District

	B.A.	B.A. + 15	B.A. + 30	M.A.	M.A. + 15	M.A. + 30	Ed.S
STEP							
1	5						
2	5						
3	3	1		1			
4	3	4		1			
5	1	4	1	1			
6	1	2		2			
7		3	2	2			
8		4		3	1		
9		1	3				
10		3	1	2	1		
11		2					
12		3	1	3	1		1
13		1		4			
14			1	1	1		
15		2	1	3	1	1	1
16				2			1
17		1	1				
18		2	1	1	2	2	
19		1					
20	2	2	3	3	2	3	2
TOTAL	20	36	15	29	9	6	5
GRAND TOTAL							120

Table 12:3 is a combination of the first two tables—salary schedule and personnel distribution. Totals are provided for each step and level and a grand total is given for the entire cost of the salary schedule based on the distribution of personnel. Finally, the program permits a rough approximation of the costs of fringe benefits based on the United States Chamber of Commerce's report dealing with employee benefit costs and total compilation of costs for a district for that schedule based on the personnel actually in the district."

TABLE 12:3 Total Salary Costs For The Previous Salary Schedule Based On The Personnel Distribution Listed Above

	B.A.	B.A. + 15	B.A. + 30	M.A.	M.A. + 15	M.A. + 30	Ed.S.
STEP							
1	74550	0	0	0	0	0	0
2	76050	0	0	0	0	0	0
3	47130	16010	0	16810	0	0	0
4	48030	65240	0	17110	0	0	0
5	16310	66440	16910	17410	0	0	0
6	16610	33820	0	35420	0	0	0
7	0	51630	35020	36020	0	0	0
8	0	70040	0	54930	18610	0	0
9	0	17810	54330	0	0	0	0
10	0	54330	18410	37820	19210	0	0
11	0	36820	0	0	0	0	0
12	0	56130	19010	58530	19810	0	20610
13	0	19010	0	79240	0	0	0
14	0	0	19610	20110	20410	0	0
15	0	39220	19910	61230	20710	21010	21510
16	0	0	0	41420	0	0	21810
17	0	20210	20510	0	0	0	0
18	0	41020	20810	21310	43220	43820	0
19	0	20810	0	0	0	0	0
20	41620	42220	64230	65730	44420	67530	46020
TOTAL	320300	650760	288750	563090	186390	132360	109950
GRAND TOTAL							2251600
Approximate Fringe Benefit Costs Using 37.3% Of Total Salary Costs. (37.3% Represents The National Average Of Benefits To Total Payroll.)							839847
TOTAL SALARY PACKAGE COSTS, INCLUDING FRINGE BENEFITS							3091447

The chief advantage of microcomputers is the speed with which they can complete tedious tasks of calculation. While they cannot make value judgments as to which salary schedule to activate within the district, they do provide almost instantaneous information to aid the decision-making process.

Regardless of which of the two systems is used, the school business administrator plays an integral part in the salary determination process. While academic management is concerned with the job descriptions, the matching of personnel to position and the communication of these decisions to the workforce, the school business administrator is concerned with the preparation of information and design of an equitable and competitive salary system that reflects the demands of the district. To accomplish this the school business administrator gathers information

regarding the compensation paid employees in competitive and comparable school districts and in the local and regional private sectors. Such information will include: base salaries, salary ranges, benefits, bonuses, merit pay/alternative pay options and the matching of position descriptions to assure compatibility of compensation programs.

The key to effective salary administration is the matching of the needs of the employees to the needs of the district. The needs of both of these groups are changing and will continue to change on a yearly basis. Therefore, careful attention to the development and administration of a sound salary program is essential.

Fringe Benefits

While costs due to salary increases continue to rise at roughly the rate of inflation, a second area of compensation, fringe benefits, is rising at a phenomenal rate. Costs and percent of payroll have risen as follows:

Year	Total Benefit Costs per worker (nationally)	% of Payroll
1959	$ 644	18.7
1979	$5560	36.6
1980	$6084	37.1
1981	$6627	37.3
1982	$7187	37.0*

As shown, both the total dollar costs have risen and the percent of the payroll has increased dramatically in the past twenty-three years. Although it is expected that the percent of payroll will level off, the dollar benefit costs will continue to rise. This is linked to the security needs of the workforce. Specific costs for fringe benefits may be lower in the area of public schools than in the overall economy as the overall range of costs is between 18 and 65 percent.

The dramatic rise in the cost and provision of fringe benefits is due to many factors. These include the need to reduce the taxable income and provide greater security for the workforce. The work of Paine and Seltz, indicates that from 1970 to 1980 there has been an increase from $5,228 to $10,398 in fringe benefits while the net pay in real dollars has only increased from $5,228 to $5,677 between the years 1970 and 1980 respectively." Moreover, the purchasing power has decreased from $1.00 in 1970 to $ 0.546 in 1980 and the overall taxable income of workers rose from $6,211 in 1970 to $12,874 in 1980. The dramatic increase of taxable income coupled with a decrease in buying power make fringe benefits extremely attractive.

The need to recoup lost income due to tax increases and inflation has led to the belief among many that fringe benefits can no longer be considered "extra." Rather, they are now viewed as a necessary ingredient of a compensation package, something almost akin to a right. Integral to most of fringe benefit packages provided as a kind of protection against the vagaries of life are the following insurances: life, health, unemployment, disability and much more.

Another reason for the rise of fringe benefits is the increased demand by employee organizations during the bargaining process as they attempt to protect employee benefits and security while achieving a more workable balance among the

salary/benefit/taxable income mix. The overall effect of these points in negotiations is to increase the benefits paid all employees of the district.

Still another influence on the size and nature of fringe benefits is the extent to which management decides to provide a real-wage increase each year. The school business administrator, saddled with a budget which reflects rising total costs and the possibility of decreased revenues, must examine the variety and cost of fringe benefits and determine the mixture that is needed to meet the demands of the associations and still fulfill management's objectives.

What can the school business administrator do to plan for appropriate inclusion of fringe benefits within the total compensation package and at the same time contain the costs of these benefits? Recognizing that benefits, as part of the compensation package, are important for the attraction, motivation and retention of good employees, the right mix of base pay, incentives, benefits and other intangible rewards must be planned, designed and implemented. Objectives must be established that permit maintenance of a competitive position, adequacy of benefits to assure basic needs and provide flexibility within the benefit plan structure. The benefits must also be linked to projected rising costs and the funding available for meeting the costs with plans for providing benefits under different cost containment procedures. Through surveys, the school business administrator can determine when employees plan to retire, the proper benefits to taxation mixture employees desire, as well as the types, status, age and needs of the employees. The latter—types (male/female), status (single, married, divorced), age and needs of employees—is critical to developing a successful mixture of a benefits/salary package. This information should be updated yearly. How best to provide these benefits is discussed in the chapter on risk management.

New Benefits. Several benefits are becoming increasingly popular during collective negotiations. The first is the use of flextime within the educational program of the district. Although not a benefit in the traditional sense, part-time employment may be considered a benefit by those individuals who seek to be actively working, but have other responsibilities and interests which make full-time work difficult or unattractive. A flextime plan can work to benefit both the educational program and the employee, since with part-time employees, salary and benefits (if any) are prorated or eliminated, thus providing a savings to the district.

Outplacement, and its corollary, retraining, are also becoming important benefit-type concepts. With the increasing decline in enrollments and the need for districts to contain and reduce costs, it is realistic that reduction-in-force, or layoffs, will occur. Retraining and outplacement assistance gives the employee a certain degree of security, at the same time that they demonstrate an active concern for the employee by the district and underscores the importance of the individuals to the organization. Although a cost to the organization, the morale benefits and good will that are created work to strengthen the organization. What is more, the retraining of personnel who might otherwise be laid off can actually reduce costs to the district, if the employee finds satisfactory employment outside the district.

Changes in family lifestyles and the ever-growing phenomenon of two-income families give rise to two additional benefits—paternity leave and day care. In the 1960s and '70s, the granting of maternity leave became a regular business practice. With the granting of this benefit, however, came certain problems including the loss of income and potentially negative impact on the careers of women.[78] Paternity

leave can help to mitigate such problems. The cost of offering some form of child care/day care options can be part of the cafeteria benefits program and, thereby, reduce the internal equity question. Such services may range from providing a listing of these services to the actual provision of child care in empty classrooms in the school district. The benefits to the district include reduced absenteeism, a more stable workforce, less turnover, increased morale and the use of such a benefit as a recruitment tool. Moreover, the child care/day care program generally will increase the quality of education in the district by promoting early learning and preparing children for the learning process.

The area of fringe benefits is not only important from the standpoint of employee morale but from the standpoint of cost containment/reduction as well. Fringe benefit costs are rising and will continue to rise at a rate faster than wage increases. This causes the school business administrator to examine all options and plan carefully for the proper balance among the wage/benefit mix so as to meet both the needs of the employees and the objectives of the district.

Resolving Negotiation Impasses

When the negotiations process meets an impasse, how can both the associations and management have a modicum of control while attempting good faith negotiations and protecting the "rights" of both parties? The two extremes resulting in no resolution are strikes by the teachers as was the case in Pennsylvania at the beginning of school year 1985-86, to seemingly total disregard by the school boards/management team for the employees, as in Kansas the same year. To break an impasse a balance must be struck in which the rights and needs of both parties in the negotiations process are taken seriously.

If, as discussed earlier, commonly used means for resolving impasses in the private sector, arbitration, becomes the general trend in the public sector, then conflict resolution in the negotiations process between teachers associations and school districts will be reduced to a manageable level.

A contributing cause to impasses is the uncertainty of costs and benefits that can be accrued from continued negotiations. There are benefits and costs in compulsory arbitration regardless of the specific techniques employed.[7] Benefits range from the protection of the public interest through the prevention of work stoppages or strikes, to the protection of employees' interests by permitting bargaining from equal strength to the use of a third party to resolve the dispute in a manner suitable to both parties. Costs range from the restriction placed on a third party who is not responsible, through the uncertainty of costs and benefits of continued negotiations, to the "chilling" effect of arbitration on the negotiations process by virtue of the uncertainty of the outcome and the restriction to make concessions. The latter usually arises in the use of conventional interest arbitration, where the arbitrator splits the difference between the two parties. It is often suggested that there are additional means to avoid the "chilling" effect and the apparent loss of control by the policy-making body. Some have suggested that the use of final-offer arbitration (either issue by issue or total package) reduces the uncertainty about the costs and benefits as well as encourages reasonable offers and willingness to resolve disputes.

With these concerns in mind, what is the role of compulsory arbitration within education? Legally there are provisions and guidelines for the arbitrator to use concerning: the authority of the public sector body, the issues at hand, the interest and welfare of the public at large, the comparison of hours, wages and terms and conditions of employment of the organization with those in other segments of the economy, overall compensation, changes in the organization depending on the outcomes of arbitration, and any other factors which might be considered in the "normal" resolution of impasse dealing with the issues of hours, wages and terms and conditions of employment.[80] It appears that the final impasse resolution procedures available for participants within the private sector—advisory arbitration (fact finding), conventional (split the difference) arbitration, final offer (issue-by-issue) or final offer (total package)—are viewed as effective ways to move both parties to want reasonable positions prior to the institution of arbitration, without damaging the overall bargaining process.

For example, the use of final-offer, total-package arbitration can be implemented successfully within the sphere of public education for the resolution of impasse disputes. It is the opinion of some that the process used in final-offer arbitration encourages both sides in the impasse dispute to make more concessions than they would otherwise, thereby bringing parties closer prior to arbitration, while increasing the level of commitment to the bargaining process following negotiations and the impasse resolution process. With final-offer arbitration both sides are generally more satisfied with the process than they would be with more conventional methods that provide for splitting the award between the stances taken by either side.[81]

Careful consideration should be given to the role of the school business administrator as implementor of the process for negotiations. He or she must be careful to avoid taking a narrow view of the potential outcomes and seek to develop realistic positions for management in light of existing and predicted conditions for the demands of the employees and the financial status of the district. By using quantitative data, the school business administrator is more likely to achieve a realistic view of the situation, a view of the larger picture and the ability of the management personnel to meet the financial and academic objectives of the district while meeting the needs of the employees.

Studies in which negotiators were trained in final-offer (total package) arbitration techniques and provided information and training in developing a more realistic perspective of the negotiations and arbitration situation, yielded more concessions on the part of the negotiators prior to arbitration, a posture of bargaining that resembled problem-solving rather than the traditional adversarial relationship and a sense of ownership of the final-outcome.[82] The latter is particularly relevant, since the conventional arbitration process does not result in a feeling of "ownership." Knowing that the arbitrator will split the difference when reaching a settlement, negotiators on both sides tend to maintain the initial and distant positions. Although not always the best method for resolving impasses, final-offer arbitration does reduce conflict and produces lower costs and greater benefits in the long run.

In preparing for arbitration, particularly final-offer arbitration, the school business administrator must be concerned with at least four matters. The first area of concern is the final status of the unresolved issues. The school business adminis-

trator must determine the exact points of disagreement and the final offers that both sides have produced on these issues. A clear delineation of these points is essential for accurate and effective arbitration. This includes adopting a realistic perspective toward the issues and not fixating on the optimal, least-cost solutions that would be beyond the realm of possibility for the arbitrator to select.

Second, the school business administrator is concerned with the history of concessions made by both parties, the support and clearly demonstrated need for the item and the degree of strength proposed by the parties. How important is the item and how important is the level at which the demand for the item is set? Consideration must be given to the level of support of the taxpaying public and practices of local and regional competition when formulating a position with respect to an item under dispute.

Third, the school business administrator is concerned with the evidence that will be used to establish the realistic nature of the management team's position. This is the singularly most important function of the school business administrator in the arbitration process. In carrying out this function, the school business administrator is responsible for insuring that the districts used in preparing "comparable data" are in fact comparable. This can be accomplished by examining size, location (rural, urban, suburban), state aid ratio, amount received in federal funds, the tax burden and effort, the number of staff, pupil/teacher ratios, the populations income levels (both mean income levels and per capita income levels), buying power of the general public, projected revenues and expenses (again a realistic projection) and similar types of information. To obtain a realistic cross section, ten to twenty districts from the immediate geographic region should be identified initially and compared. Then a similar cross section from across the state should be selected and compared to those deemed really comparable from the local region.

Fourth, once the comparable districts have been located, the school business administrator needs to compile and produce information on the current status and proposed offering of each of the unresolved items. For instance, if salary were in dispute, a table of starting and ending salaries by level would be appropriate for each of the comparable districts including the difference (either plus or minus) between the comparable district and the district the school business administrator serves. Such tables of information should be prepared for each of the unresolved issues including "non-cost" items as well. These tables should also include information about the local and regional private sector as a means to bolster the position of the district by demonstrating comparability of rewards/compensation and the value of the positions under dispute.

The tables of comparison serve two purposes. First, they provide the management team with information regarding the district's standing comparable to similar districts. This enables management to adopt a realistic posture on the unresolved issue. This is particularly important if the district is out of alignment with comparable districts, thereby facilitating a change in the final offer prior to arbitration, if such a change in position were warranted. Second, assuming that the position of the district were realistic, the clarity of these tables will assist the arbitrator to ascertain management's position in rendering the final decision. By demonstrating the relative and realistic position of the district to comparable districts, management's final position on the issues is strengthened.

Finally, the school business administrator must take note of the tactics used and responses to challenges made during the actual arbitration hearing.

Although the control of the hearing process is in the hands of the arbitrator and the spokesperson for the team, the school business administrator should expect figures and points of comparison to be challenged by the other side. In addition, a spirit of mutual cooperation and civility must be maintained. Providing that the tables and other evidence are well prepared, let the evidence speak for itself. When appropriate also, the school business administrator should challenge any perceived inaccuracies in the opposing side's presentation and ask for clarification of positions and evidence presented to insure that the management team understands fully the implications of what is being presented. The focus of attention of the team members should be on the arbitrator, who will render the final decision. It should be noted that challenges by either side should not be taken personally. Many arbitration hearings have been "lost" when the challenges have been taken as personal affronts and the expected reaction has been elicited.

Although arbitration may not be the best means to resolve disputes and solve problems between the management and the employees of the district, it does provide for solutions without resorting to more drastic measures. Also, the use of final-offer arbitration does permit more realistic concessions and bargaining positions between the affected parties. This spirit of mutual cooperation and collegiality can work to foster better relations between management and employees, while maintaining the balance of power and responsibilities between the two parties.

Summary

This chapter has dealt with, in large part, the role of the school business administrator within the collective negotiations process. While remaining a provider of information, the role of this administrator has expanded to include that of designer, coordinator, consultant and change agent in both the management of the district and in the collective negotiations process. In considering the various aspects of the negotiations process, from compensation management through salary administration, the mixture of fringe benefits to salary and the place of final arbitration within impasse resolution, the role of the school business administrator calls for creativity and flexibility aimed at assisting the management team in meeting its goals and objectives, facilitating an understanding of the issues and incorporating the needs of the employees into the negotiations process.

Notes

1. S. Linnick, *Public Sector Labor Relations: An Overview and Constitutional Considerations in Public Sector Labor Relations* (Practicing Law Inst. Litigation Course Handbook Series, No. 201, 1982), 17.

2. Ibid., 18.

3. Freeman, "The Negotiating Impasse in Labor Relations for Teachers," *5 Vermont Law Review 39 (1980)*, 42.

4. *B. Werne, The Law and Practice of Public Labor Relations*, (1974), 225-228.

5. Henkel and Wood, "Legislative Power to Veto Collective Bargaining Agreements by Faculty Unions: An Overlooked Reality?," 11 *Journal of Law & Education* 79 (1982), 85.

6. In AZ, NC, TX, UT, and VA it is illegal for a public employer to bargain collectively. In Texas the Board of Trustees of each school district may consult with teachers on their conditions of employment ("meet and confer"). In GA, KT, LA, MS, OH, SC, and WY no statute or case law imposes a duty to bargain or to meet and confer.

7. Linnick, 9.

8. As of 1984, the duty to meet and confer existed in AL, MO, NE, NM, OK, RI, SD, VT, and WV. In Texas, where collective negotiation by governmental bodies is illegal, the local school district board of trustees has the option to meet and confer with its employees.

9. Linnick, 9.

10. 1 *Public Employee Bargaining Reporter*, (CCH) 2500.

11. CA (collective negotiations in elementary and secondary education; meet and confer in higher education), HI, IN, ME, MN, NV, and PA (collective bargaining when dealing with all public employees except first-level supervisors; must meet and confer with first-level supervisors).

12. CCH 1500.

13. Werne, 400.

14. These include at least AK, CA, CT, HI, IL, KS, ME, MD, MA, MI, MT, NV, NJ, NY, ND, OK, PA, RI, SD, TN, VT, and WA.

15. CT, HI, MD, NV, NJ, ND, OK, PA, RI.

16. Werne, 400.

17. See *Adelphi Univ.*, 195 NLRB 639, 79 LRRM 1545 (1972) at 1555-56, where the Board stated that collegiality "does not square with the traditional authority structures with which this Act (NLRA) was designed to cope . . . (A) genuine system of collegiality would tend to confound us."

18. *Northeastern Univ.*, 218 NLRB 247, (1975) at 248.

19. S.G. Kramer, *Collective Bargaining & Collegiality in Labor Relations and Equal Opportunity in Higher Education*, (Practicing Law Inst. Litigation Course Handbook Series No. 111, 1977) 197. This was the position taken by the Division of Advice of the NLRB in Endicott College, 4 AMR 10, 219 (March 18, 1977).

20. H.T. Edwards, "The Emerging Duty to Bargain in the Public Sector", 71 *Michigan Law Review* 885, 909 (1973).

21. CA, DE, IN, IA, KS, ME, MD, MA, MI, MN, MT, NV, NH, NJ, NY, ND, OH, PA, RI, SD, WA, and WI.

22. CA, CT, DE, FL, HI, IA, KS, MI, MN, MT, NV, NJ, NY, OH, OR, PA, TN, VT, WA, and WI.

23. These include IN, ME, MA, MN, NV, and OR.

24. Werne, 247.

25. Oklahoma

26. In North Dakota honesty, temperance, civics and the work ethic.

27. Werne, 173.

28. 5 CER 2470.2 (Supp. 1973).

29. States with statutory procedures as of 1984 include AK, CA, CT, DE, DC, FL, HI, ID, IL, IN, IA, KS, ME, MD, MA, MI, MT, NE, NV, NH, NJ, ND, NY, OH, OK, OR, PA, RI, SD, TN, VT, WA, and WI.

30. All except MD, NE, OK, SD, and WI.

31. This is so in AK, DC, IL, NV, PA, RI, TN, and VT.

32. Werne, 173.

33. CA, CT, DE, FL, HI, ID, IL, IN, IA, KS, ME, MA, MT, NV, NH, NJ, NY, ND, OH, OR, PA, TN, VT, WA.

34. CA, DE, HI, IN, IA, KS, ME, MT, NH, NY, ND, OH, OR, TN, WA.

35. Except in Nevada.

36. Werne, 175.

37. Ibid., 181.

38. States doing so include AK, CT, DC, HI, IL, IN, IA, ME, MA, MN, MT, NJ, NY, OH, OR, PA, RI, and WA.

39. AK, NY, PA, and SD.

40. HI, IL, IN, ME, MS, NJ, OH, and SD.

41. See Freeman, 43-45.

42. Werne, 306.

43. Binding arbitration is not sanctioned in the statutes of DE, FL, LA, MO, ND, SC, VA, and WV.

44. CA, CT, DC, FL, HI, IN, IA, KS, LA, ME, MD, MS, MI, MO, MT, NM, NY, ND, OR, RI, SC, VT, WV, and WI.

45. AK, DE, IL, MN, NJ, OH, PA, and TN.

46. Werne, 379.

47. Ibid., 384.

48. Ibid., 374.

49. See note 43.

50. *Public Employees Rel. Comm. v. Dist. Sch. Bd.*, 374 So.2d 1005 (Fla. 2d DCA 1979).

51. *Dunellen Bd. of Educ. v. Dunellen Educ. Ass'n.*, 64 NJ 17, 311 A. 2d 737 (1973).

52. *Brady v. Bd. of Trustees*, 242 N.W. 2d 616 (Neb. 1976).

53. *Antinore v. New York*, 371 N.Y.S. 2d 213 (App. Div. 4th Dept. 1975), aff'd mem. 358 N.E. 2d 268 (N.Y. 1976). It should be noted that this case involved a civil service employee.

54. Smit, Frank, and Rosemier, "The Impact of Mandatory Collective Bargaining Laws on a School Board's Ability to Govern," 4 *Gov't Union Rev.* (Spring 1983).

55. *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. (1964).

56. Wisconsin Association of School Boards, Language for Use by Wisconsin School Boards in Writing Labor Agreements 8 (1968).

57. Waren, 413.

58. *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977).

59. Jascourt, "Looming Legal Issues in Labor Relations in Education", 12 *J. of Law and Educ.* 443 (July, 1983).

60. *Robinson v. State of New Jersey*, 112 LRRM 2308 (D.N.J. 1982).

61. Jascourt, 446.

62. Lieberman, "Educational Reform and Teacher Bargaining," 4 *Gov't Union Rev.* 59-67 (Summer 1983).

63. *Talbot v. Concord Union Sch. Dist.*, 323 A. 2d 912 (New Hampshire, 1984).

64. Linnick, 10.

65. See e.g., A.J. Rowe, R.O. Mason, and K.E. Dickel, *Strategic Management and Business Policy: A Methodological Approach*, (Reading, MA: Addison-Wesley) 1980; H. I. Ansoff, *Strategic Management*, (New York: John Wiley & Sons) 1979.

66. C. R. Perry, "Teacher Bargaining: The Experience in Nine Systems," *Industrial and Labor Relations Rev.*, 33 (Oct., 1979), 3-17.

67. M. Derber and M. Wagner, "Public Sector Bargaining and Budgetmaking Under Fiscal Adversity," *Industrial and Labor Rel. Rev.*, 33 (Oct., 1979), 18-25.

68. Ibid., 23.

69. J.R. Palmer, *The Use of Accounting Information in Labor Negotiations*, (New York: National Ass'n of Accountants) 1977.

70. P. Kienast et. al., "The Modern Way to Redesign Compensation Packages," *Personnel Administrator*, 28 (June, 1983), 127-131.

71. R. B. Ellig, "Compensation Management: Past and Future," *Personnel*, 54 (May-June 1977), 30-40.

72. P. R. Lewis, "Legal Trends," *Labor Law J.*, 28 (Aug., 1983), 15-16.

73. D. E. Britten, "Rational Salary Administration," *Personnel J.*, 62 (Oct., 1983), 832-835; T. Turnasella, "Market Indexed Compensation," *Personal Administrator*, 29 (May, 1984), 27-30.

74. E. J. Brennan, "Problems With Salary Ranges and Realistic Solutions," *Personnel J.*, 59 (Mar., 1980), 190.

75. Chamber of Commerce of the U.S., *Employee Benefits: 1982* (Washington: Chamber of Commerce) 1984.

76. Chamber of Commerce of the U.S. *Employee Benefits: 1982*. (Washington: Chamber of Commerce) 1984; J. J. Greene and R. G. Roberts, "Strategic Integration of Compensation and Benefits," *Personnel Administrator*, 28 (May, 1983), 78-80.

77. T. A. Paine and C. A. Seltz, "Development of Employee Benefits in the U.S.," *Financial Executive*, 44 (July, 1976), 54-61.

78. P. Feuille, "Selected Benefits and Costs of Compulsory Arbitration," *Industrial and Labor Relations Rev.*, 33 (Oct., 1979) 64-76.

79. See e.g.,: S. B. Rynecki, "Can Compulsory Arbitration Work in Educational Collective Bargaining: A Second Look: A Management View," *J. of Law and Education*, 9 (Jan., 1980), 93-101; C. N. Lentz, "Can Compulsory Arbitration Work in Educational Collective Bargaining: A Second Look: The Teacher Organization Perspective," *J. of Law and Education*, 9 (Jan., 1980), 85-101; D. S. Chauhan, "The Political and Legal Issues of Binding Arbitration," *Monthly Labor Rev.*, 102 (Sept., 1979), 35-41.

80. See e.g.,: F.A. Starke and W.W. Notz, "Pre and Post Intervention Effects of Conventional Versus Final Offer Arbitration," *Academy of Management J.*, 24 (Dec., 1981), 832-838; D.W. Grigsby and W.J. Bigoness, "Effects of Mediation and Alternative Forms of Arbitration on Bargaining: A Laboratory Study," *J. of Applied Psychology*, 67 (Oct., 1982), 549-554; G.A. Olson, "Does 'Final Offer' Allow the Bargaining that Conventional Arbitration Chills," *Monthly Labor Rev.*, 102 (May, 1979), 38-39.

81. A.S. DeNisi and J.B. Dworkin, "Final Offer Arbitration and the Naive Negotiator," *Industrial and Labor Relations Rev.*, 35 (Oct., 1981), 78-81; M.A. Bazerman and N.A. Neale, "Improving Negotiation Effectiveness Under Final Offer Arbitration: The Role of Selection and Training," *J. of Applied Psychology*, 67 (Oct., 1982), 543-548.

82. Ibid.